

D-9

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 9, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 09OD-098

OAHU

Grant of Term, Non-Exclusive Easement to Three W Corp for Rock Groin,
Seawall, Steps, and Filled Area Purposes, Lanikai, Kailua, Hawaii, Tax Map Key:
(1) 4-3-001:011 seaward.

APPLICANT:

Three W Corp., a Nevada profit corporation whose mailing address is 1607 Mokulua
Drive, Kailua, Hawaii 96734.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Lanikai, Kailua, Oahu, identified by Tax
Map Key: (1) 4-3-001:011 seaward, as shown on the attached map labeled Exhibit A.

AREA:

1,714 square feet, more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing rock groin, seawall, steps, and filled area over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Office of Conservation and Coastal Lands (OCCL) staff observed the subject encroachments and determined it appeared to be built before 1974, prior to the enactment of the EIS law and this action is therefore exempt from Chapter 343, HRS.

DCCA VERIFICATION:

Landowner. Not applicable.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment; and
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;

REMARKS:

During a recent shoreline survey, the subject encroachment was discovered, which consists of rock groin, seawall, steps, and filled area with a total area of 1,174 square feet.

A copy of the latest survey map is attached as Exhibit B.

According to the aerial photographs provided by the applicant, the subject encroachment was in existence prior to 1949. There is no other information relating to the intent of such encroachments.

OCCL does not consider the encroachment is a Conservation District violation. Further, OCCL determined that public access would not be improved by removal of the encroachment. Therefore, OCCL support a disposition being processed for the subject encroachment by its letter attached as Exhibit C.

Division of Aquatic Resources, Department of Hawaiian Home Lands, State Historic Preservation Division, Board of Water Supply, and Department of Facility Maintenance have no comments/objections on the request.

Department of Health, Commission on Water Resource Management, and Department of Planning and Permitting have not responded as of the suspense date.

Office of Hawaiian Affairs asks "if removal of the structure and the subsequent release of sand to the littoral cell would improve the overall littoral process in the area". According to OCCL's comments at Exhibit C, "[r]emoval of the revetment will not improve beach resources in the area ... would likely release the sand to the littoral cell, at the expense of the wet beach."

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, and the current version of Section 171-6(12), Hawaii Revised Statutes, staff is recommending a fine of \$1,000 as the subject encroachment is over 100 square feet.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

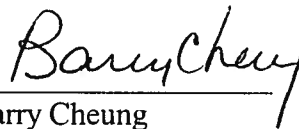
There are no other pertinent issues or concerns, and staff has no objections to the request.

RECOMMENDATION: That the Board:

1. Impose a \$1,000 fine for illegal encroachment, under Section 171-6(12).
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-3-001:011, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Three W Corp covering the subject area for rock groin, seawall, steps, and filled area purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-3-001:011, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
 - E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson 

Dwg. No. 118
 By: G. H. H. Dec. 1951
 Source: Top. Map Bureau
 L. C. Appln. 616

Appr. by:
 Revised by:
 Appr. by:

LANIKAL, DARU.

4-3-02

4-3-03

Subject Location

SEA

SECTION I
 U.S. MILITARY RESERVATION
 W A I M A N A L O

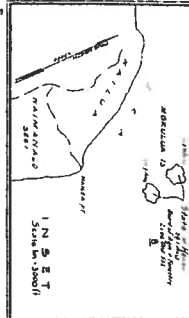
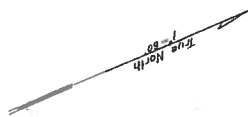
SEA

ADVANCE SHEET
 SUBJECT TO CHANGE

PRINTED

First	DIVISION
Zone	SEC. PLAT
4	3 01
CONTAINING 1 RANGEL	
Scale 1 in = 80 ft	

Original Survey 19



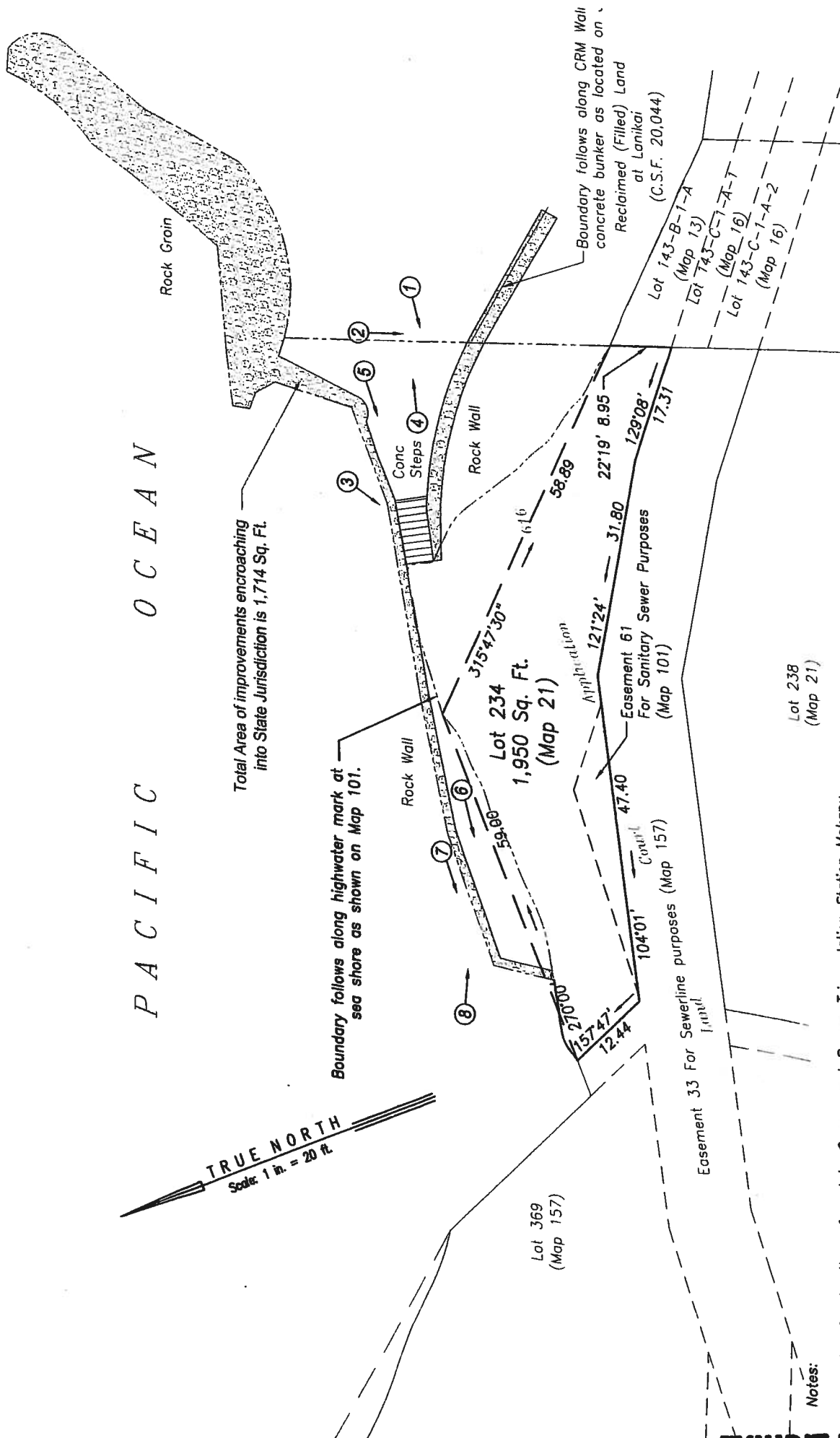
4 3 01

EXHIBIT "A"

6) Rock Wall shown in a Northwesterly direction. Comparison of the backyard area, rockwall, and the ocean.

7) Rock Wall shown in a Northwesterly direction. Comparison of the backyard area, rockwall, and the ocean.

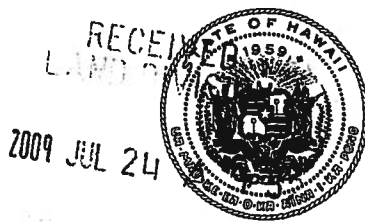
8) Rock Wall shown in a direction.



Notes:

1. Origin of azimuths referred to Government Survey Triangulation Station Makapu.
2. Photos taken on March 12, 2009.
3. direction of photos taken.
4. Total calculation of encroachment is based on the actual improvements that are encroaching State Jurisdiction.

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:DLNR:CC

File Number Encroachment: OA-09-009

JUL 24 2009

Mr. Richard A. Wheelock, President
Three W Corp
1607 Mokulua Drive
Lanikai, HI 96734

Dear Mr. Wheelock,

SUBJECT: Request to Resolve State Land Encroachment at 1607 Mokulua Drive, Lanikai, Hawaii 96734, TMK (1) 4-3-001:011, owner Three W Corp, Richard Wheelock, President

This is in response to your June 2009 request to resolve the shoreline encroachments at Tax Map Key (1) 4-3-001:011.

According to information and maps contained with your request, you have identified approximately 845 square feet of encroachment (groin, seawall, and steps) makai of the subject property onto State land. The total area of the encroachment should be measured from the makai private property boundary out to the structure, and then around any sections of the structure that are outside of the extensions of the side boundaries. **We recommend recalculating the total area of the encroachment.**

OCCL staff was unable to locate any construction permit or other land use authorization permits at the State for the subject improvements, and none were provided by the applicant. However, aerial photographs provide evidence that the encroachment was in existence prior to 1949. It appears, from the evidence presented, as though the structure is intact and unaltered since prior to the inception of the Conservation District rules.

As a consequence, DLNR does not consider the encroachment a Conservation District violation and will not be asking for an after-the-fact Conservation District Use Application to cure this matter. Should the OCCL find that the structure has been significantly altered since the inception of the Conservation District rules, the OCCL may reconsider this finding.

The Board of Land and Natural Resource (BLNR) established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In

EXHIBIT "C"

carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted.

Surrounding Land Uses:

The surrounding coastal uses are primarily residential. This area is at Wailea Point, at the south end of Lanikai, and there are only a few upland developments beyond the coastal parcels.

Beach Resources:

The beach resource in this area is marginal. There is no beach on the northwest side of the structure. There is an ephemeral, wet beach on the southeast side of the structure. Aerial extent of the beach is limited, and it is submerged during portions of the year.

Public Access:

The shoreline has poor public access. There are no dedicated public shoreline accesses in the area, and the encroaching land uses are makai of a private roadway. The only access to the area is by water.

Effect of Removing the Encroachment on:

Beach Resources: Removal of the revetment will not improve beach resources in the area. The encroaching groin is maintaining the small, wet beach fronting the encroaching seawall on the southeastern side. Removal of the encroaching groin would likely release the sand to the littoral cell, at the expense of the wet beach.

Public Access: OCCL staff has determined that public access would not be improved by removal of the encroaching seawall and groin. As there is almost no public access currently, removal of the encroachments and the subsequent loss of the small, wet beach would not improve access.

Affect on Adjacent Properties: Removal of the groin would not have any significant impact on the adjacent properties. Removal of the seawall would likely lead to the loss of the private roadway and potentially destabilize an adjacent seawall.

It has been a general policy and practice of the OCCL to support easement requests that have no discernable effect on beach and recreational resources, and do not act as a detriment to public access. In cases where the encroachment serves as primary erosion

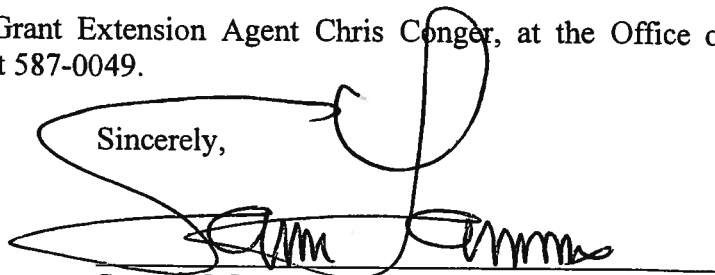
control for potentially threatened structures, impacts to the adjacent and upland developments must also be considered.

Upon review and careful consideration of the information gathered on this case, staff has determined that the requirements stated in HRS § 205A, HRS § 183C, and in the OCCL's evaluation criteria would support a disposition request being processed for the encroachment. The OCCL suggests that proper signage be placed identifying that the seawall, beach, and the mauka State land are open to the public. The OCCL suggests that any disposition require the land uses remain unimproved. However, if improvements are allowed the OCCL also suggests a requirement for an integrated public access component to address the mandated lateral shoreline access parameters stated in HRS § 115.

The OCCL also suggests that the total area of the encroachment be recalculated.

Please feel free to contact Sea Grant Extension Agent Chris Conger, at the Office of Conservation and Coastal Lands at 587-0049.

Sincerely,

A handwritten signature in black ink, appearing to read 'Samuel J. Lemmo', is written over a horizontal line. The signature is stylized with loops and flourishes.

Samuel J. Lemmo, ADMINISTRATOR
Office of Conservation and Coastal Lands

cc: Land Division
Office of Hawaiian Affairs, Grant Arnold
DPP, City & County of Honolulu